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Directive 04-4: Reasonable Cause for Waiver of G. L. c. 21J, s. 12 Penalties

Introduction. Chapter 21J of the General Laws governs the operation of the Underground Storage Tank Cleanup Fund. Under G. L. c. 21J, § 12, any owner or operator who possesses a fee collected or payable under chapter 21J and who fails to remit the fee at the time and in the manner required by chapter 21J, is liable for a penalty of five percent of the amount of the fee due and payable. If any owner or operator fails to file the report or pay the fee before the thirtieth day after the date on which the fee or report is due, the owner or operator must pay an additional penalty of five percent of the fee due and payable. For every additional thirty days or portion thereof that the report or fee remains unfiled or unpaid, the owner or operator must pay a penalty of another five percent of the fee due and payable. *Id.* “The Department has the authority to waive the penalty upon a showing of reasonable cause.” *Id.*

The Department has previously adopted “reasonable cause” standards for waiving the penalties imposed under G. L. c. 62C, as set out in Administrative Procedure 633. These standards, however, contain criteria that are often inapplicable to the penalties imposed under G. L. c. 21J, § 12. As a result, the Department is issuing this Directive, which sets out some of the particular standards to be used in deciding whether circumstances warrant a waiver or abatement of penalties in the context of underground tank storage.

Directive. The Department may presume that reasonable cause exists for at least a portion of a delay when an owner or operator demonstrates any of the following:

1. Voluntary disclosure of the existence of an underground storage tank not previously known to the Underground Tank Storage Unit.

2. The facility is no longer operating as a dispensing facility and is not eligible for reimbursement.

3. The owner or operator performed a site assessment acceptable to the Underground Storage Tank Petroleum Product Cleanup Fund Administrative Review Board for the purpose of obtaining a certificate of compliance or obtained private environmental impairment insurance that satisfies federal and Massachusetts financial responsibility requirements.

4. A subsequent purchaser, who exercised due diligence in the purchase of the property, purchased the facility and that facility was not the subject of a prior certificate of compliance revocation by the UST Program.

5. The owner or operator notified any state or local official or any local fire department official regarding the installation, removal or existence of the facility and/or the underground storage tank system.

These reasons are not exhaustive, and because decisions with regard to abatement and waiver of penalties are made on a case by case basis, other situations may warrant a waiver or abatement of penalties. For the same reason, there may be circumstances in which one or more of the five criteria above are applicable, but other, aggravating, circumstances make abatement or waiver of the penalty inadvisable.

Authority. General Laws, chapter 21J, section 12.

/s/ Alan LeBovidge

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